October 10, 2007

Commission's Secretary
Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: WC Docket No. 06-210
CCB/CPD 96-20

REVISED FURTHER CERTIFIED COMMENTS OF COMBINED COMPANIES INC.

Comments and Additional Evidence Provided on the Duration of the June 17th 1994 Grandfathered Immunity Period

Dear FCC Staff:

I Larry G. Shipp, who at all times relevant to the issues raised by the above captioned action, was president of Combined Companies, Inc. (CCI). Therefore, having knowledge of the **undisputed facts** and events now before the Federal Communications Commission (FCC), and as well having knowledge of specific tariffs cited within petitioners recent FCC filings, wish to further certify to the following:

1) When restructuring a CSTP II plan prior to November 9th 1995 the new plan simply **assumes the terms and conditions** of the old plan and stays grandfathered on restructures till the end of the term period of the CSTP II ordered or in effect prior to pre June 17th 1994.

See here as exhibit A is section 3.3.1.Q.4 Cancellation or Discontinuance of AT&T's 800 Customer Specific Term Plan II---Without Liability as of June 17th 1994.

See on page 2

> CSTPII Plans in effect on or prior to June 17th, 1994 are not subject to condition 2, preceding.

2) CSTP II plans that were **not** in effect prior to June 17th 1994 had to meet monthly pro rata commitments when restructured; and plans that were in effect prior to June 17th 1994 did not have to meet monthly pro rata commitments when restructured.

The tariff states at section 6: (exhibit CC to petitioners 9/27/06 FCC initial filing)

> A CSTPII expires when the three year term ends.

Therefore the plans were immune until the end of their 3 year period --- not just one of the fiscal years in the plan. AT&T argued that the CSTPII plans once restructured after June 17th 1994

became post June 17th 1994 classified plans no matter how many years left there was in the 3 year commitment. [1]

3) Although AT&T counsel continued to advise aggregators and assert to the Courts that their plans could only be restructured one time after June 17th 1994, AT&T's tariff staff, which was referred to as the "Product House" understood the June 17th 1994 provision actually allowed unlimited restructures. See petitioner provided audio taped conversations of many AT&T business managers asserting pre June 17th issued plans could be restructured continually without shortfall and termination charges. See exhibit JJ in 9/27/06 FCC petitioner comments. See exhibit GG in petitioners 9/27/06 filing which are excerpts of audio tapes (which AT&T and the District Court has a copy) from 13 AT&T managers stating their tariff interpretation was that the 3 year plans were immune from S&T penalties. Therefore Between (June 17th 1994 -November 9th 1995) a pre June 17th 1994 CSTP II plan could be continually restructured every month without penalty. The tariff on June 17th 1994 dictated that the restructure immunity period was till the end of the term period-here 3 years. However AT&T customers restructured their CSTP II plans and continually extended the end of the 3 year term end date and continued to pass pre June 17th 1994 terms and conditions.

4) AT&T recognized that its aggregator customers were moving their plans traffic to PSE and Tele-Save's CT-516 discount plan of 66% instead of the CSTP II 28% and were simultaneously restructuring their pre June 17th 1994 contracts revenue commitments downward. When restructuring (i.e. discontinuation of a plan) the **terms and conditions** passed to the new plan until the end of the three year restructure immunity period**.** [2]

5) Example: If a 3 year CSTP II plan was ordered as of May 1st 1994 (which obviously is a pre June 17th 1994 plan) that May 1st -1994 –April 30th 1997 plan could be restructured through April 30th 1997 under the pre June 17th 1994 grandfather immunity provision. In actuality the order would always be done no later than the 11th month in a fiscal year to convert the 12th month of the old plan into the 1st month of the new plan. The terms and conditions of the pre June 17th 1994 plan continued to pass to the new plan no matter how many restructures were done prior to the end of the three year term. **The three year term end period dates kept getting extended outward in time.** AT&T wished to extinguish the aggregators so it migrated its non aggregator customers to AT&T offering such as: Uniplan, Custom–Net and Contract Tariffs which had business down turn clauses ----- but AT&T herded the aggregators for slaughter under the CSTP II offering.

6) AT&T then closed, with its prospective November 9th 1995 tariff filing, the continuous restructuring of the plans term end dates that also most importantly **passed the pre June 17th 1994 S&T immunity terms and conditions.** If AT&T's counsel had been correct in its August 1996 brief to the FCC that a pre June 17th 1994 plan became a post June 17th 1994 plan upon the first restructure there would have been absolutely no reason to file the November 1995 tariff

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[1] AT&T's Dec 29th 2006 FCC brief asserts on page 32 para 2:

> Rather, the grandfather clause provided a **one-time exemption** from prorated shortfall charges when a pre-June 17, 1994 **plan** was "cancelled," and replaced with a "**new**" plan.

[2] PSE and Tele-Save obtained their CT-516 discount plans by bring claims against AT&T. AT&T refused competitive CT to all other aggregators unless legal claims were brought against AT&T.

change other than to **extinguish the passing of the terms and conditions** that allowed pre June 17th 1994 plans to continually restructure under the old law.

7) In the November 1995 exhibit FF in petitioners 9/27/06 filing (also here under exhibit A for the Commissions convenience) AT&T closes the door for the aggregators ability to frequently restructure while under its 3 year term and keep the terms and conditions of the old plan passing to the new plan.

8) What AT&T did was prospectively change the tariff as of November 9th 1995 so that after the **first** post November 9th 1995 restructure the AT&T customer no longer passed its pre June 17th 1994 terms and conditions that allowed S&T immune restructures. The immunity under para 2B was only was allowed to pass on the first post November 9th 1995 restructure.

9) See exhibit FF in petitioners 9/27/06 FCC comments (copy here within exhibit A) is the relevant excerpt of the November 1995 section 2.5.18 – Discontinuance Without Liability at 2B.

> The Service provided under the Old Plan must be replaced with service provided under the New Plan. The termination date of the Old Plan and the initial service date of the New Plan must be the same day, **and all rates, terms and conditions of the Old Plan will "remain in effect" until that day**, provided that the Old Plan shall not remain in effect beyond the expiration of its term.

10) Although the pre June 17th 1994 S&T immunity terms and conditions did not continually pass from plan to plan; the November 9th 1995 para 2C "June 17th 1994 plan exemption" then kicked in for the remaining balance of the pre June 17th 1994 term commitment. See exhibit FF in petitioners 9/27/06 FCC comments (here within exhibit A) at paragraph 2C:

> C. If the Old Plan includes an annual revenue commitment, a Shortfall Charge will apply as provided in 1., following. **The Shortfall Charge will not apply in connection with the discontinuance of a CSTPII that was ordered on or prior to June 17th, 1994**

11) So the CSTP II plans that were **classified** [3] as pre June 17th 1994 plans were exempt from S&T charges under the tariff at 2B through the first post November 9th 1995 restructure. However the para 2C exemption kicks in for the remaining balance of the CSTP II term plan – here three years. So the CCI pre 6/17/94 CSTP II plans that were restructured to produce an April 1st 1995- March 31st 1998 3 year term ---- could restructure under the old rules till March 1998. This is because the Pre June 7th 1994 plans kept passing its terms and conditions until AT&T stopped the passing of the terms and conditions after the first post November 9th 1995 restructure. Then the 2C., exemption kicks in for the remaining term balance of the three years remaining of the 3 year term plan that started prior to November 9th 1995.

[3] The plans were either pre June 17th 1994 plans because they were actually subscribed to prior to June 17th 1994 --- OR were subscribed to prior to June 17th 1994 and restructured between June 17th 1994 and November 9th 1995 and therefore passed its pre June 17th 1994 **terms and conditions from the old plan to the new plan** – and thus remained immune from S&T charges when restructured.

12) Thus the first restructure after November 9th 1995 did allow for the passage of all the terms and conditions of the Old plan to the New Plan but the pre June 17th 1994 grandfathered terms and condition no longer passed after the first restructure under para 2B. The second post November 9th 1995 restructure could only utilize the 2C exemption if there was time remaining in the three years.

13) With its November 9th 1995 tariff revision AT&T shortened the immunity period. AT&T killed the passing of the terms and conditions after the first post November 1995 restructure and then caped the immunity period under the 2C exception to the time remaining in the three year plans.

14) So if the **first** post November 9th 1995 restructure was, as in CCI's case, done in February 1996 that produced a new March 1st 1996 start date (March 1st 1996-February 28th 1999 three year term), and thus under the November tariff at 2B, CCI was allowed to restructure using the old Pre June 17th 1994 S&T immune terms and conditions. But subsequent post November 9th 1995 restructures would be under the 2C exemption for pre June 17th 1994 plans.

15) Additionally AT&T made sure that if the first post November 9th 1995 restructure was after the term end date the terms and conditions would not pass on the first restructure.
Tariff piece….

> and all rates, terms and conditions of the Old Plan will remain in effect until that day, **provided that the Old Plan shall not remain in effect beyond the expiration of its term**

Very simple, the pre June 17th 1994 plans immunity (terms and conditions) passes only until the remaining time of the commitment – here 3 years.

16) If the CSTP II plans were first time post November 9th 1995 restructured **after the 3 year term end of the pre June 17th 1994 classified CSTPII plan** that plan restructure was subjected to meeting monthly pro rata commitments. However either petitioners or CCI had restructured all pre June 17th 1994 plans in 1995 prior to November 9th 1995 to retain the pre June 17th 1994 terms and conditions and therefore were pre June 17th 1994 S&T immune plans into 1998.

AT&T's August 26th 1996 Comments to the FCC.

17) The FCC asked for additional comments due to the June 1996 shortfall and termination charge infliction after having received 190 complaints from end-users which had S&T charges inflicted against their bills in excess of the tariffed remedy at 3.3.1.Q bullet 10. (exhibit D in petitioners 9/27/06 FCC initial filing. AT&T 8/26/96 page 16 fn 15:

> The explicit exemption for pre-June 17,1994 CSTP II Plans was permitted under a tariff revision accomplished by Special Application No. 1871, filed June 14, 1994, revising the then-pending AT&T Transmittal No. 6508, filed February 17, 1994. It is referred to herein as the **"Grandfather Clause."**

18) In reference to the June 17th 1994 CSTP II plans AT&T itself concedes this is a "Grandfather Clause". Standard FCC procedure is to grandfather the plan for the life of the plan. Not one year of the plan. A 3 year term plan includes three annual commitments not just one.

See AT&T 8/26/96 page 17-18 **here as exhibit B:**

> This construction of the plain meaning of the tariff is supported by the intent expressed by the affected parties when the **Grandfather Clause** took effect. **The resellers themselves,** who intervened in AT&T's tariff proceeding clarifying the application of shortfall charges as a condition of discontinuance without liability, **argued for a grandfather clause "that would exempt *plans*"** entered into before the effective date of AT&T's clarifications; "AT&T must, at a minimum... insert... a provision that limits the application of the new language to **plans (not customers)** executed after the effective date of the transmittal."[17]
> (emphasis added). Thus, they conceded that shortfall charges could be imposed on those same customers for "those **plans** entered into after the effective date of the transmittal establishing the change" (emphasis in the original).
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> AT&T Footnote 17
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> PSE's Petition to Reject or Suspend and Investigate, In the Matter of AT&T Tariff F.C.C. No. 2. Transmittal No. 6508. filed Feb. 25,1994, at 4-5; see also, GE Capital Communications Services Corporation's Petition to Reject or Suspend and Investigate, In the Matter of AT&T Tariff F.C.C. No. 2, Transmittal No. 6508. filed Feb. 25,1994, at 4-5. The petitions cited herein are attached as Exhibits B (PSE), C (GECCS) and D (Furst Group).

19) As AT&T stated above the entire aggregator industry petitioned to reject AT&T June 17th 1994 provision for several months. However AT&T clearly has intentionally misrepresented that the aggregator's explicit demand to have the **plans** grandfathered somehow meant to AT&T that the aggregators only wanted one fiscal year of the three year commitment grandfathered. The aggregators were not demanding that the **customer** would always remain immune, no matter how many plans it subscribed to as AT&T asserts. The aggregators simply wanted the 3 year revenue commitment of the plans immune from S&T charges when restructuring and that is what the June 17th 1994 provision did. However, what the June 17th 1994 provision did not do was limit the passing of the pre June 17th 1994 S&T immune terms and conditions, which AT&T then changed as of November 9th 1995.

20) AT&T counsel clearly understood in its **8/26/96** FCC brief that the pre June 17th 1994 S&T immunity terms and conditions continued to pass from the old plan to the new plan upon each restructure under the June 17th 1994 tariff revision ---- because AT&T's 8/26/96 statement was made 9 months after its November 9th 1995 filing. AT&T had already issued within its November 9th 1995 tariff ---- 9 months earlier than the 8/26/06 FCC filing ---- whereby AT&T conceded that a plan which was restructured after June 17th 1994 but prior to November 9th 1995 did retain the Old Plans terms and conditions upon starting a new plan. The only reason for the November 9th 1995 tariff filing was to stop the terms and conditions from being passed and to limit the immune period to the term end of the pre June 17th 1994 classified plan.

21) AT&T's assertion that the aggregator industry actually endorsed AT&T's erroneous 8/26/96 interpretation of the June 17th 1994 tariff revision is obviously an intentional misrepresentation.

AT&T 8/26/96 page iii **here as exhibit C**

> **The "new" Plan did "not" retain any "terms or conditions" of the old plan**, and in particular there is no language in the tariff to support any interpretation that the "new" plan retained the subscription date of the old plan for any purpose whatsoever. To the contrary, any "new" plan subscribed to concurrently with the cancellation of the pre-June 17, 1994 plan is not, by definition, a "CSTP II Plan in effect prior to June 17, 1994." **This plain meaning of the tariff was "endorsed" by the very reseller community** to whom (along with all other customers) it was to be applied.

Despite AT&T knowing--- as of 8/26/96 that the 9 month earlier issued November 9th 1995 tariff revision--- explicitly states that the new plan **does retain the terms and conditions** of the old plan tells the Commission just the opposite.

22) Obviously there were **no** aggregators in 1994 nor 1995 which **endorsed** AT&T's one restructure and you lose the 3 year term plans grandfathered terms and conditions, which provided S&T immunity.

23) Despite the fact that AT&T's comments to the FCC were made August 26th 1996 AT&T did not recite the clear tariff interpretation in the November 1995 tariff revision to address the June 1996 S&T infliction. AT&T simply went back to the June 17th 1994 tariff page and attempted to spin what the tariff meant to AT&T. [4]

AT&T 8/26/07 page 18 which is on the second page of exhibit B herein:

> Another reseller argued for a **'"Fresh Look'** opportunity to terminate their CSTP II **plan commitments** without liability before the fundamental terms of those commitments are changed out from under them**."**[19]
> **Consistent with these proposals**, AT&T revised its pending tariff to include the Grandfather Clause[20] and the Commission allowed the tariff clarifications to take effect.[21]
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> **19** The Furst Group, Petition to Reject or Suspend and Investigate, In the Matter of AT&T Tariff F.C.C. No. 2. Transmittal No. 6508. filed Feb. 25,1994, at 5.
> **20** Reply of American Telephone and Telegraph Company, In the Matter AT&T Tariff F.C.C. No. 2, Transmittal No. 6508. filed Feb. 28,1994, at 2.
> **21** Order, In the Matter of AT&T Tariff F.C.C. No. 2. Transmittal No. 6508. released June 17,1994.

24) Above, the argument by an aggregator "The Furst Group" for a **"Fresh Look"** demonstrates

[4] AT&T has argued to the Commission that it can not look at revised sections of 2.1.8 that were made in November 1995, May 1996 and June 2002 to interpret section 2.1.8 in Jan 1995 at the time of the "traffic only" transfer. AT&T asserted that the revised 2.1.8's were not "controlling." Here the Commission issued a Public Notice and asked the parties to comment **due to the June 1996** S&T infliction. AT&T can not assert that the 9 month earlier issued **November 9th 1995** concession that the June 17th 1994 provision passed the "terms and conditions" is not controlling.

the exact position taken by all the aggregators which was that the entire 3 year revenue commitment entered into prior to June 17th 1994 should be restructured under the pre June 17th 1994 rules. The very definition of **Fresh Look** is the ability to get out of the commitment completely without any charges and take a **fresh look** at another offering. Attached **here as exhibit D** is an FCC Order relating to toll free service as the CSTP II plans, in which the FCC acknowledges that a "**Fresh Look"** means the customer is allowed to get out of its service agreement with no termination liability. AT&T's 8/26/96 brief states on page 18 "**consistent with these proposals"**, of the aggregators AT&T revised its pending tariff to include the Grandfather Clause. Therefore AT&T in regard to providing S&T immunity did provide its pre June 17th 1994 classified CSTP II plans with "**Fresh Look"** status.

25) The June 17th 1994 grandfathered clause and the November 9th 1995 revision had the same affect as the **Fresh Look** because it totally exempted the entire CSTP II remaining revenue commitment till the end of the original termination date as the November 1995 tariff change indicates. Thus the customer would have no S&T liability which would have provided the same results as a **"Fresh Look",** as AT&T counsel in 8/26/96 asserted the aggregators were entitled to.

26) AT&T did not want the CSTP II customers to have an actual "**Fresh Look"** because a "**Fresh Look"** would also have provided even more benefits to AT&T customers than just being immune from S&T charges. If a "Fresh Look" were allowed every aggregator would have taken advantage of it because whether the aggregators made a **$600,000** annual revenue commitment for 3 years or a **$33,000,000** annual revenue commitment for 3 years, the AT&T **discount is the same** CSTP II 23% discount and the RVPP bucketed discount (no discount on first 25,000 of revenue, 4% on $25,000 to $100,000, 5% on $100,000 to 250,000, and 6% on amount over $250,000).

27) Under AT&T's CSTP II offering the primary reason that an aggregator increases its revenue commitment is to obtain signing bonuses not to obtain additional discounts. See petitioners Date Received Date Adopted: 09/07/07exhibit A page 8 for CSTP II commitment levels and their discount percentages. If an actual Fresh Look was provided an AT&T customer could re-sign and obtain substantial additional promotional signing bonuses or leave AT&T completely with no penalty. The June 17th 1994 provision did make the plans S&T immune however the aggregator must continue to be committed to staying with AT&T.

The Case At Hand-
Restructures Were Done Timely and Properly But AT&T Refused to Recognize Them

28) It is an undisputed fact that CCI's **first** post November 1995 restructure for two CSTP II plans was ordered in February 1996 to convert the last service month (March 31st 1996) of the fiscal year (April1st 1995-March 31st 1996) into the first post November 1995 new three year term plan. The (March 31st 1996) year end month was converted into the first month of a new plan (March 1st 1996 –February 28th 1999). Petitioners president Mr Inga had restructured these two plans in March 1995 when petitioners still controlled the CSTP II plans (prior to the May 1995 Politan Decision transferring the plans to CCI) to produce the 3 year term of April 1st 1995 through-March 31st 1998. Petitioners restructure was the first post June 17th 1994 restructure. Therefore AT&T's position was that because the 1995 petitioner restructure was the first post June 17th 1994 restructure it did not impose S&T charges as AT&T's counsels erroneous

interpretation was that the June 17th 1994 provision only provided a one time exemption from S&T charges. AT&T's position was that if petitioners March 1995 restructure was the second post June 17th 1994 restructure, AT&T would have applied S&T liability under its one time exemption for its June 17th 1994 interpretation. When CCI did a restructure in February 1996 (the first post November 1995 restructure) AT&T's position is that it did not allow this February 1996 restructure because it was the second post June 17th 1994 restructure.

29) AT&T simply ignored that petitioners March 1995 restructure which produced the (April1st 1995 –March 31st 1998) 3 year term plan was ordered prior to November 9th 1995 and therefore passed the grandfathered pre June 17th 1994 S&T immunity terms and conditions. When CCI did its February 1996 ordered restructure it was only the first post November 9th 1995 restructure and thus the terms and conditions had to pass from old to new plan as per para 2B in the November 9th 1995 revision at 2B. Furthermore November 9th 1995 at para 2C exempted CCI through March 31st 1998 — which was the end of the three year term (April 1st 1995 – **March 31st 1998)** that was ordered by petitioners while still classified as a pre June 17th 1994 plan ---- because of the terms and conditions having been passed on petitioners order made in March 1995. The Charles Fash July 3rd 1996 letter (exhibit BB 9/27/06 petitioner filing) confirms that March 31st 1996 was the end of the fiscal year. Relevant excerpt here:

> Indeed the relevant period for calculation of the shortfall charges in issue did not expire until **March 31st 1996,** and the charges were then billed on the **June 1, 1996 bills.** AT&T's claim for payment of these charges obviously could not have been the subject of litigation until both of these events had occurred.

30) Additionally **here as exhibit E** is an April 23rd 1996 letter from AT&T account manger Andrea Anton to CCI erroneously stating CCI had an eminent shortfall problem with the plans it **had already restructured**. The Ms Anton letter stated on April 23rd 1996 that the anniversary date on the two plans (2829 and 3124) was April 1st 1996 (the previous fiscal years ending date obviously being March 31st 1996). The Ms Anton letter (admittedly written for her by the first cc: counsel Mr Fash) **totally ignored** the timely February 1996 CCI ordered restructure converting the first fiscal year (April 1st 1995 – **March 31st 1996**) ending month (March 31st 1996) in into a beginning month in a new 3 year term contract of (March 1st 1996 – February 28th 1999) . Because the S&T charges are only inflicted **at year end** on pre June 17th plans, CCI correctly avoided the March 31st 1996 year end of the (April 1st 1995 – March 31st 1996) fiscal year. CCI agreed in exchange to extend its time commitment to AT&T, the old petitioner 3 year term end was March 31st 1998 (April 1st 1995- March 31st 1998). The new CCI 3 year end was February 28th 1999 (March 1st 1996-February 28th 1999). So AT&T got an extra 11 months time commitment on the restructure.

31) On page two of the Ms Anton April 23rd 1996 letter she also noted that two additional CSTP II plans 2430 and 3524 were also in danger of shortfall. After the April 23rd 1996 letter CCI responded with a letter dated April 25th 1996 (**here as exhibit F**) explaining that not only had plans 2829 and 3124 had been timely restructured but so had plans 2430 and 3524 been timely restructured. All of these 4 plans restructures were the first post November 1995 restructures. The 5th plan RVPPID 3663 did not need to be restructured until 1997 as it was well over commitment in 1995 and 1996 however AT&T stopped paying commissions on that plan too in June 1996. When 2 of the 5 plans **allegedly** went into shortfall in June 1996 AT&T advised CCI

that it was using our compensation on the 3 so called good plans to pay off the so called bad plans. When in actuality none of the plans were in shortfall.

32) **Here as exhibit G** is yet another CCI letter dated May 23rd 1996 (a week prior to the June 1996 S&T charge inflicting CCI's end-users. The letter again reminds AT&T of the previous April 25th letter and in para 2 states:

> **As I mentioned to you today, and previously advised you via letter on April 25th, 1996 (copy enclosed),** CCI was entitled, under its agreements, and the **tariffs governing those agreements, to restructure its plans—which it did in a timely and appropriate manner.** Therefore, pursuant to AT&T's own tariffs, THERE IS NO SHORTFALL ASSOCIATED WITH THE PLANS IN QUESTION.

33) **Here as exhibit H** is yet another CCI letter dated June 18th 1996 to Carl Williams again advising AT&T that it was violating its tariff by not adhering to the restructure provision in which CCI kept the pre June 17th 1994 **terms and conditions**. See para three:

> Let me restate, once again, that these plans, in which these customers wee located, are plans that **CCI was allowed, pursuant to AT&T's filed FCC Tariff(s) to restructure—which we did.** Therefore, CCI was, and is, in full compliance with the **"terms and conditions**" of our tariffed obligations to AT&T.

34) **Here as exhibit I** is yet another CCI letter also dated June 18th 1996 to Ms. Jan Binch again explaining these plans were properly restructured in accordance with the tariff. Note the following excerpt:

> CCI exercised its rights under the AT&T filed FCC tariffs governing these plans, and **restructured these plans prior to any tariffed requirement for "true-up."** This action, which has been routinely accomplished by numerous AT&T customers (both resellers and commercial customers alike), was addressed and provided for, **in tariff filings by AT&T back in 1994**, when it **grandfathered this right for all plans in existence prior to June 17th 1994 (** which included all of CCI's plans). Specifically the tariffs allow for the term plan(s) held by CCI (or any other customer with a pre-June 17th plan) to be extended, without penalty of any kind—thereby avoiding any tariffed requirement for annual "true-up".

35) **Here as exhibit J** is a CCI letter dated Jan 22nd 1997 to CCI account manager Ms Sharon De Mills. The last paragraph on page 1 of the letter confirms that plan ID 3663 was restructured. Page three of this **exhibit J** is a notice to petitioners that CCI properly and timely did the plan 3663 restructure in the 23rd month of service, which converted the 24th month into the 1st month of a new three year plan, thus properly avoiding the end of the 24th month as true-ups only occur at fiscal year end. Obviously the 3663 plan was previously restructured in February 1995 to

produce a March 1st 1995-February 28th 1998 three years CSTP II pre June 17th 1994 classified plan. The 1995 restructure was obviously prior to the November 9th 1995 changes. The Jan 1997 restructure of plan ID 3663 was therefore the first post November 9th 1995 restructure and thus also was immune from S&T charges until the end of the 3 year term (February 1998) in which it had been classified as a pre June 17th 1994 plan because it retained the terms and conditions prior to November 9th 1995. Thus it would only be able to restructure under the old rules to February 28th 1998.

36) **Here as exhibit K** is an April 28th 1997 letter to AT&T's John Andrews that restructured plans 3524, 2829, 3124, and 2430. Again all these plans were within three year term endings from their pre June 17th 1994 starts and were within two years from their 1995 pre June 17th 1994 classified restructures which were done prior to November 9th 1995 ----- and thus the plans were classified as pre June 17th 1994 restructures because they kept their pre June 17th 1994 terms and conditions and were all immune as per November 9th 1995 at 2C.

37) **Here as exhibit L** is a letter sent to petitioners on April 29th 1997 which shows that despite the restructuring done by CCI on plan 3663 AT&T again ignored it and placed shortfall on 3663. AT&T simply ignored all timely and proper restructure requests.

38) By 1998 it is all academic in any event as the commitments on the plans would still have been immune. Because the commitment goes down by 11/12ths a year when restructured in the 11th month of a fiscal year, by 1998 the plans could have been restructured down to no commitment left. At any time the plans could have been merged into a new Contract Tariff.

39) The Commission will notice within exhibit A ---- AT&T's August 29th1996 additional prospective changes to the Discontinuation Without Liability Section. AT&T recognized that when plans were restructured the overall commitment remaining went up, however the annual average revenue commitment went down. See restructuring example footnoted in which the remaining commitment goes up ($5,000=$30,000-25,000) where the average yearly (therefore monthly) revenue commitment goes down—in example by $2,000 ($10,000-$8,000**).**[5]

[5] Restructuring /Upgrade Example: A three year commitment of $12,000 per year ($36,000 over 3 years), restructured the commitment at the end of the 11th month in the first year, it would take the remaining 25 months x $1,000 ($25,000) =$8,333 a year. However, since $8,333 was not a specified commitment level the AT&T customer had to increase its yearly commitment to one of the specified commitment levels in the tariff. Thus a $10,000 per year commitment level is taken not the $8,333 figure. **The yearly commitment went down by $2,000 per year,** $12,000 to $10,000; but there was an increase in the overall commitment from originally having 25 months left at $1,000 per month, $25,000 total, to the new $30,000 commitment. (New term assumption starting date (TASD) would result in a contract of 3 years x $10,000 per year = $30,000**).** The time period increases and the total commitment **went up** by $5,000 ($30,000-25,000). Plans that were ordered prior to June 17th 1994 would be able to restructure the contracts and at the time of restructuring would not have to be meeting monthly prorated revenue commitments. Plans that were taken out after June 17th 1994 would have to meet monthly pro rated revenue commitments. If the plans in this example were post June 17th 1994 plans the aggregator having restructured in the 11th month of its plan would have needed to be doing 11/12th's of its fiscal year commitment or it would have shortfall liability(ies) inflicted upon its plan. If the plans were pre June 17th 1994 then there would be no shortfall liability(ies) inflicted.

40) AT&T mandated as of August 29th, 1996 the restructures at 2.5.18.E also had to result in the new plan having an average annual (monthly) commitment at least equal to the Old plans average monthly commitment. As the Commission can see this additional AT&T requirement was exempt at 2.5.18 F.1.(b)---**for pre June 17th 1994 CSTP II plans**. Therefore CCI CSTP II plans could continually be restructured down in commitment.

41) If CCI wished to renew its CSTP II or CCI simply could have walked away with no commitment remaining and placed its traffic in whatever CT, Tariff 12, VTNS, etc. it wanted. When AT&T hit the first two plans with S&T charges in June 1996 and stopped paying on all plans CCI (and petitioners) were effectively unlawfully put out of business by AT&T; especially when AT&T, in not following its tariffs, used an illegal remedy in applying the non permissible charges.

42) The duration of immunity answer was in the original Joint Appendix in 2003 on page 137. However the only thing that made it a disputed fact in 2003 for the FCC was that the FCC did not know what the old 3 year term plans ends were. The FCC only knew that the plans started prior to June 17th 1994.

43) With the Charles Fash July 3rd 1996 letter and the letters between CCI and AT&T's Andre Anton exhibited here the Commission now has all the restructure dates for all the pre June 17th originated plans in question. All CSTP II/RVPP plans were timely and properly restructured and there are no disputed facts surrounding this issue.

Here as exhibit M is AT&T's 8/26/96 FCC filing at ii-iii which also asserted there are no disputed facts:

> the Commission should issue a declaratory ruling on the specific issue identified in its Public Notice; i.e, whether "pre-June 17, 1994 CSTP II plans, as are involved here, may never have shortfall charges imposed, as long as the plans are restructured prior to each one-year anniversary." **No factual issues surround this question**.

43) The FCC is not being asked to rule that the plans would **forever** be immune from S&T charges when timely restructured. Because AT&T killed all five plans when the first two were allegedly in shortfall the FCC only has to recognize the first two plans were immune as of their first post November 1995 restructure.

44) The FCC is also being requested to declare that the remedy utilized by AT&T in inflicting the S&T charges in excess of 3.3.1.Q bullet 10 discount cap was unlawful (See exhibit D in petitioners 9/27/06 filing) Therefore AT&T can not rely upon the S&T charges inflicted in June 1996 even if they were lawful. There are no disputed facts just a simple tariff interpretation on all of these issues.

I understand that I am subject to punishment for any intentional misrepresentations.

Respectfully submitted,
//Signed//
Larry G Shipp
On behalf of Combined Companies Inc.